



Guidance Document 17-07

Adopted October 19, 2017

This guidance document is advisory in nature but is binding on the Nebraska Real Property Appraiser Board ("Board") until amended or repealed by the Board. A guidance document does not include internal procedural documents that only affect the internal operations of the Board and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document (Neb. Rev. Stat. § 84-901.03 (2)).

SUBJECT: Credentialing Experience Requirements Prior to January 1, 2014

LEGAL REFERENCE: Neb. Rev. Stat. §76-2204 (Laws 2015, LB139, § 4); Neb. Rev. Stat. §76-2215 (Laws 2015, LB139, § 29); Neb. Rev. Stat. §76-2216 (Laws 2015, LB139, § 30); Neb. Rev. Stat. §76-2220 (1) (Laws 2015, LB139, § 40); Neb. Rev. Stat. §76-2221 (Laws 2016, LB731, § 7); Neb. Rev. Stat. §76-2228 (Laws 2015, LB139, § 46); 298 NAC, Ch. 2, § 002.01 (2017)

SUMMARY OF ACTION

Guidance Document 17-07 was adopted by the Board at its October 19, 2017 meeting as presented.

BACKGROUND

After the Appraisal Subcommittee completed its review of the Nebraska appraiser regulatory program on July 18, 2013, an email was received by Director Kohtz from Policy Manager Neal Fenochietti inquiring about mandatory trainee status in the State of Nebraska. Mr. Fenochietti indicated that because one is required to be credentialed to exercise judgment in arriving at the analyses, opinions, or conclusions concerning real estate or real property, and there are five levels of credentialing, anyone attempting to gain experience that exercises judgment concerning real estate or real property is required to be credentialed under the Real Property Appraiser Act. During its August 22, 2013 meeting, the Nebraska Real Property Appraiser Board ("Board") discussed a report prepared by Director Kohtz (Exhibit 1) pertaining to this matter.

The following excerpt is from the August 22, 2013 meeting of the Nebraska Real Property Appraiser Board:

Director Kohtz researched the references made by Mr. Fenochietti, and presented a report to the Board detailing his findings concerning credentialing requirements for real property appraisal experience credit. When all statutes and rules related to experience requirements, and the ability to engage in real property appraisal activity in the state are read together, the conclusion reached by the Director is that a person must be credentialed in order to acquire experience for credentialing as a licensed residential, certified residential, or certified general real property appraiser. If a person engages in any act or process of developing an analysis, opinion, or conclusion relating to the value of specified interests or aspects of identified real estate or identified real property for a fee or other valuable consideration, he or she must be credentialed under the Act; therefore, only experience hours obtained as a real property appraiser meets the statutory requirements for experience. If one does not hold a credential as a licensed residential, certified residential, or certified general real property appraiser, one must hold a credential as a trainee real property appraiser.

Director Kohtz also outlined an implementation plan for the Board to consider. The first step will be establishing a notification period to allow those currently in the process of obtaining experience time to come into compliance with the Act. A memo from the Board will be sent and information will be placed on the website. The deadline for obtaining a credential as a trainee real property appraiser for the purpose of acquiring experience for credentialing shall be January 1, 2014. Any experience obtained after January 1, 2014, must be as a credentialed real property appraiser. All experience acquired outside of the State of Nebraska, must be obtained in compliance with the Nebraska Real Property Appraiser Act.

Board Member Langemeier requested that the Board consider a Board Policy addressing this reinterpretation of the Real Property Appraiser Act. Board Member Kubert made a motion to approve Board Policy 13-12, requiring credentialing as a real property appraiser for any appraisal experienced obtained after January 1, 2014, and approve the implementation plan outlined by Director Kohtz. The motion was seconded by Board Member Woodle, and carried with Langemeier, Terrell, Woodle, Kubert and Barkley voting aye.

The Board discussed this matter further at its October 10, 2013 regular meeting, and amended Board Policy 13-12 to state “as of January 1, 2014,” instead of “after January 1, 2014.”

Board Policy 13-12 was retired by the Board on May 24, 2017 due to the implementation of LB867.

An education provider contacted the Board’s office in August of 2017 to inquire about the application of 298 NAC, Chapter 2, § 002.01, which states, “Appraisal experience obtained within the State of Nebraska, or as a resident of the State of Nebraska, for credentialing as a licensed residential, certified residential, or certified general real property appraiser must be acquired as a trainee real property appraiser, registered real property appraiser, licensed residential real property appraiser, or certified residential real property appraiser.” Specifically, the education provider requested clarification as to if experience obtained prior to January 1, 2014 is still accepted by the Board if the experience was obtained by a non-credential holder.

The Board discussed the education provider's inquiry at its September 21, 2017 regular meeting and concluded that it needs to provide direction to the public clarifying the Board's intent that experience obtained prior to January 1, 2014 may be obtained by a non-credential holder.

ANALYSIS

The current language in 298 NAC, Chapter 2, § 002.01 does not include guidance related to experience obtained prior to January 1, 2014 as it was not known at the time the original language was drafted that LB867 would be enacted by the Legislature, making a number of changes to the rulemaking provisions of the Administrative Procedure Act ["APA"], Neb. Rev. Stat. §§ 84-901 to 84-918 (2014, and Cum. Supp. 2016). Agencies are authorized to issue "guidance documents," which are defined to "mean any statement developed by an agency which lacks the force of law but provides information or direction of general application to the public to interpret or implement statutes or such agency's rules or regulations."

GUIDANCE

For the purpose of 298 NAC, Chapter 2, § 002.01, the Board may accept experience obtained prior to January 1, 2014 by any person not holding a credential issued by the Board at the time the experience was obtained if all other requirements of the Nebraska Real Property Appraiser Act and Title 298 pertaining to appraisal experience are met.

Appraisal means an analysis, opinion, or conclusion prepared by a real property appraiser relating to the value of specified interests in or aspects of identified real estate or identified real property. An appraisal may be classified by the nature of the assignment into either a valuation assignment or an evaluation assignment.

§76-2221. Act; exemptions.

The Real Property Appraiser Act shall not apply to:

(3) Any person who provides assistance:

- (a) in obtaining the data upon which an appraisal is based,
- (b) in the physical preparation of an appraisal report, such as taking photograph, preparing charts, maps, or graphs, or typing or printing the report, or
- (c) that does not directly involve the exercise of judgment in arriving at the analyses, opinions, or conclusions concerning real estate or real property set forth in the appraisal report;

§76-2228. Appraisers; classification.

There shall be five classes of credentials issued to real property appraisers as follows:

- (1) Trainee real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section [76-2228.01](#);
- (2) Registered real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section [76-2229.01](#);
- (3) Licensed residential real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section [76-2230](#);
- (4) Certified residential real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section [76-2231.01](#); and
- (5) Certified general real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section [76-2232](#).

298 NAC Chapter 5, Section 005

Applicants for the licensed residential credential, certified residential credential, or certified general credential must demonstrate, on forms provided by the Board, that they have met the appraisal experience requirements established in §§ 76-2230, 76-2231.01 and 76-2232. Each applicant will be required to furnish, under oath, a listing of his/her appraisal experience for each year for which experience is claimed. The Board will select a minimum of three reports from the log submission for review. Candidates for the licensed residential credential must submit at a minimum three Board selected residential appraisal reports for review. Candidates for the certified residential credential must submit Board selected residential appraisal reports, including one two-to-four unit residential property, one residence of 0 to 20 years, and one 20 years or older residence in summary or self-contained format and two reports must include at least two approaches to value. Candidates for the certified general credential must submit Board selected appraisal reports on income producing properties, two of which include all three approaches to value. Reports will not be returned. The Board may require applicants to submit additional details or to submit additional samples of appraisal reports or file memoranda prepared by the applicants, and the Board may seek verification of the applicant's experience from other persons.

298 NAC Chapter 5, Section 006

Each applicant's experience for the licensed residential credential, certified residential credential, or certified general credential will be based upon the number of hours of appraisal activity. To qualify for the license residential credential an applicant shall demonstrate, over no less than a 12-month period, at least 2,000 hours of appraisal experience acceptable to the Board. To qualify for the certified residential credential an applicant shall demonstrate, over no less than a 24-month period, at least 2,500 hours of appraisal experience acceptable to the Board. To qualify for the certified general credential an applicant shall demonstrate, over no less than a 30-month period, at least 3,000 hours of appraisal experience acceptable to the Board, which must include at least 1,500 hours in non-residential appraisal work.

CONCLUSION

Considering all statutes and rules shown above together leads to the conclusion that an individual must hold a credential to obtain experience that directly involves the exercise of judgment in arriving at analyses, opinions, or conclusions concerning real estate or real property set forth in the appraisal report.

Neb. Rev. Stat. § 76-2220 specifies that it is unlawful for anyone to act as a real property appraiser in this state without first obtaining proper credentialing as required under the Real Property Appraiser Act (Act), and N.R.S. § 76-2228 describes the five classes of real property appraisers. N.R.S. § 76-2216 defines what a real property appraiser is, and one of the indicators is "who engages in real property appraisal activity." Per N.R.S. § 76-2215, real property appraisal activity means any act or process, performed for a fee or other valuable consideration, involved in developing an appraisal or preparing an appraisal report. Finally, according to N.R.S. § 76-2204, appraisal means an analysis, opinion, or conclusion prepared by a real property appraiser relating to the value of specified interests in or aspects of identified real estate or identified real property. If one engages in any act or process of developing an analysis, opinion, or conclusion relating to the value of specified interests or aspects of identified real estate or identified real property for a fee or other valuable consideration, he or she must be credentialed under the Act.

The former paragraph evidences the requirement of a credential to engage in real property appraisal activity. However, the statutes leading to this conclusion do not define what is considered part of the "act or process" involved in developing an appraisal or preparing an appraisal report. N.R.S. § 76-2221 (3) clarifies the previous statement, and says "the Real Property Appraiser Act shall not apply to any person who provides assistance in obtaining the data upon which an appraisal is based, in the physical preparation of an appraisal report, such as taking photograph, preparing charts, maps, or graphs, or typing or printing the report, or that does not directly involve the exercise of judgment in arriving at the analyses, opinions, or conclusions concerning real estate or real property set forth in the appraisal report." The activities detailed in N.R.S. § 76-2221 (3) provides for certain "acts" that are exempt from the Real Property Appraiser Act; and therefore, are not considered to be "real property appraisal activity," and do not require credentialing under that Act.

The requirements for credentialing and the exempt “acts” have now been defined. Despite the aforementioned conclusions, the requirement to be credential as a trainee real property appraiser for the purpose of obtaining experience to become a licensed residential, certified residential, or certified general real property appraiser has not yet been established. Language found in Chapter 5 of Title 298 clarifies this. 298 NAC Chapter 5, Section 005, explains the requirements for experience reported to the Board for review, and also provides a guide for the Board to follow concerning the review of appraisal reports for applicants for each classification. The first requirement for credentialing as a trainee real property appraiser is established in this section by the following language, “The Board may require applicants to submit additional details or to submit additional samples of appraisal reports or file memoranda prepared by the applicants.” Through this statement it is implied that appraisal reports must be prepared by an applicant for the licensed residential, certified residential, or certified general real property appraiser credential for experience to be accepted by the Board.

Although it has now been concluded that an applicant must prepare appraisal reports as part of his or her experience, a requirement for the number of experience hours allotted to the preparation of appraisal reports is not established. The second requirement for credentialing as a trainee real property appraiser is established in 298 NAC Chapter 5, Section 006, which states “each applicant’s experience for the licensed residential credential, certified residential credential, or certified general credential will be based upon the number of hours of appraisal activity.” Since “appraisal activity” is not defined separately in the Act or the rules, the definition of “real property appraisal activity” is applied. In order for experience to be acceptable to the Board, it must be obtained as part of any act or process, performed for a fee or other valuable consideration, involved in developing an appraisal or preparing an appraisal report. As stated previously, if one engages in any act or process of developing an analysis, opinion, or conclusion relating to the value of specified interests or aspects of identified real estate or identified real property for a fee or other valuable consideration, he or she must be credentialed under the Act; therefore, only experience hours obtained as a real property appraiser meets the statutory requirements for experience. If one does not hold a credential as a licensed residential, certified residential, or certified general real property appraiser, one must hold a credential as a trainee real property appraiser.

IMPLEMENTATION

Implementation of the mandatory trainee requirement should begin immediately. The first step will be establishing a notification period to allow those currently in the process of obtaining experience time to come into compliance with the Act. A memo from the Board will be sent and information will be placed on the website. The deadline for obtaining a credential as a trainee real property appraiser for the purpose of acquiring experience for credentialing as a licensed residential, certified residential, or certified general real property appraiser shall be January 1, 2014. Any experience submitted to the Board after January 1, 2014, must be as a credentialed real property appraiser. Any experience submitted by an individual that is not a real property appraiser will not be accepted by the Board, and may lead to additional action by the Board. All experience obtained outside of the State of Nebraska, must be obtained in compliance with the Nebraska Real Property Appraiser Act.